

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3289 OF 2004

NAVNATH
SITARAM
WAGHMARE

The Municipal Corpn. Of The City Of Pune

...Petitioner

Versus

The Oriental Insurance Co. Ltd.

...Respondent

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Mr. Abhijit P. Kulkarni a/w Mr. Abhishek Roy for the Petitioner.

Mr. Devendranath S. Joshi a/w Mr. Pradyumna S. Thakurdesai for the Respondent.

CORAM : M.M. SATHAYE, J.

DATE : 23rd SEPTEMBER, 2026

P.C. :

1. Invoking Article 227 of the Constitution of India, the Petitioner-Municipal Corporation is taking exception to Judgment and Order dated 02.01.2004 passed by the 7th Additional District Judge, Pune in Civil Appeal No. 29 of 2001. By the said impugned order, Petitioner's appeal was dismissed thereby confirming the Judgment and Order dated 13.10.2000 passed by the Additional Chief Judge, Small Causes Court, Pune in Municipal Appeal No. 175 of 1991. In effect, the challenge by the assessee (sole Respondent) to the rateable value ('RV' for short) fixed by the Petitioner Municipal Corporation, has been accepted and the RV is reduced from Rs.5,43,550/- to Rs.50,600/- with effect from 01.04.1991.

2. The Petitioner-Municipal Corporation issued special notice to the owner of the building under Taxation Rules framed under Bombay Provincial Municipal Corporation Act 1949 ('the said Act' for short).

Inspection was carried out. The assessing officer passed an order on 30.03.1991 fixing the RV at Rs. 5,43,550/- for the subject matter property in which Respondent - Insurance Company is occupying first and second floor as a lessee of the owner.

3. The Respondent filed the said municipal appeal under Section 406 of the said act. The Respondent examined its administrative officer and one valuer, who has submitted valuation report in respect of first and second floor in possession of Respondent.

4. The learned Judge of the Small Causes court who heard and tried the said appeal, was pleased to allow it thereby setting aside the impugned bill dated 03.06.1991 and fixing the RV as explained above. The Petitioner corporation was directed to correct the assessment and extra taxes collected from Respondent was directed to be refunded with interest (on failure to refund).

5. The Petitioner -Municipal Corporation filed appeal under Section 411 of the said Act. and challenged the decision of the Small Causes Court. By the impugned order, said appeal has been dismissed.

6. It is in these circumstances that the Petitioner -Municipal Corporation is before the Court. The petition was admitted on 13.04.2004 and the order of the refund was stayed.

SUBMISSIONS

7. Learned counsel for the Petitioner, Mr. Kulkarni submitted that the Respondent assessee has failed to lead evidence in response to the special notice and since the burden squarely lies on the Respondent, no fault can be found with the assessment order and the Courts below were not justified in considering the evidence led by the Respondent to

come to contrary conclusion. He further submitted that necessary notice of transfer of title as provided under Rule 1 of the Taxation Rules is not given to the Municipal Corporation. He further submitted that admissions given before the Court about standard rent are not properly considered. He relied upon the following caselaw in support of his case:

i) Pune Municipal Corporation and Ors. Vs. Smt. Vimal Govind Joshi , (Bombay High Court order in Civil Revision Application No. 25 of 2009 dated 29.04.2015).

ii) Municipal Corporation of City of Pune vs. M/s. E.L.F. Filament Industries Pvt. Ltd. (Bombay High Court order in Writ Petition No. 6151 of 1999 dated 28.02.2025).

8. On the other hand, learned counsel for the Respondent Insurance Company, Mr. Joshi supported the impugned order contending *inter alia* that special notice was not issued to the Respondent -Insurance company and it was issued to the owner (Lessor); however the bill was raised on the Respondent -Insurance company. He submitted that therefore the whole action is vitiated because there is no notice to Respondent. He further submitted that in absence of notice, the burden cannot be cast upon Respondent to lead evidence. He further submitted that in any case, necessary evidence has been led and valuer has been examined with his report, which has been believed by the Courts below, concurrently finding in favour of Respondent. He therefore submitted that no interference is required.

REASONS AND CONCLUSIONS

9. I have considered the rival submissions and perused the record.

10. Rule 15(2) of the applicable Taxing Rules, pressed into service by

learned counsel for the Petitioner contemplates 15 days notice special written notice to owner or occupier of the premises. In the peculiar facts of the present case, it is apparent from the assessment order itself that notice was given to the owner of the building (lessor of the Respondent) and not to the Respondent (lessee). Assessment order further shows that a representative on behalf of the assessee had appeared, however, since he had no letter of authority, the assessing officer proceeded *ex-parte*. The assessment order also shows that the assessee had demanded the occupier's bill by a letter dated 30.03.1991. In such circumstances, when the Respondent did not have any notice, the assessment order has been passed when written demand of same date about occupier's bill was made. Since Rule 15(2) contemplates special notice to owner or occupier, there is an option available with the Municipal Corporation. In the present case, the Petitioner has chosen to issue notice to the owner. Apparently there is nothing on record to indicate that notice was given to Respondent and occupier. It is also clear that for want of authority letter, the representative of the assessee was not heard.

11. So far as argument that 'notice of change in title is not not given' is concerned, it is material to note that, prior to assessment order, on the date of inspection (15.09.1990) itself, the Petitioner was aware that Respondent Insurance Company was occupying part of the building and the very reason stated in Form-A is change in occupier/use and increase in rent income. This is clear from bare perusal of Form-A produced on record. If that be so, nothing prevented the Petitioner Municipal Corporation to issue special notice to Respondent/occupier also.

12. Viewed in the light of what is observed above, the impugned orders show that the learned judge of the Small Causes Court as well as learned District Judge have both considered that though the tax

bill was issued to Respondent-Insurance Company, a special notice was given to the Owner and not to the Respondent. Therefore, Courts below have held that the action of assessment was vitiated.

13. In such peculiar facts, when the Respondent/occupier (in whose name bill was raised) was not given special notice, burden cannot be cast upon Respondent/occupier to lead evidence about assessment . For that reason, the judgments relied upon by the learned counsel for the Petitioner would not advance the case of the Petitioner.

14. So far as the merits of the impugned orders is concerned, by which assessment is fixed at a particular amount, it is fixed on the basis of evidence of the valuer and the reasons provided by the valuer for arriving at a particular figure. Both the Courts have accepted the evidence of the valuer concurrently. In that view of the matter, there is no reason to interfere in the concurrent findings, as no perversity is seen. The view taken under impugned order is the most probable view.

15. In the aforesaid fact and circumstances and for reasons indicated above, **writ petition is dismissed. Rule is discharged. Interim relief is vacated. No order as to costs.**

16. At this stage, learned counsel for the Municipal Corporation submits that assuming that bill issued to the Respondent-Insurance Company is to be quashed and set side, still, when the Owner/ lessor has not challenged the rateable value, it could not have been fixed at a particular amount. He therefore seeks liberty to re-issue special notice for the concerned year 1990-1991. It is not possible to permit re-opening of assessment after a long gap of 36 years. Hence, the request is rejected.

17. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)